IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 1ST FEBRUARY 2007 / 12TH MAGHA 1928

WP(C).No. 27787 of 2004(G)

PETITIONER:

VELAYAMKANDY NAFEESA, D/O. UKKAYYA,
AGED 49 YEARS, RESIDING AT "ZERENE", 35/447,
VENGARI P.O., KOZHIKODE DIST.

BY ADV. SRI.C.P.MOHAMMED NIAS

RESPONDENT:

THE CORPORATION OF CALICUT,
REP. BY ITS SECRETARY, BEACH ROAD, KOZHIKODE.

BY ADV. SRI.M.P.PRABHANANDAN,SC,KOZHIKODE CORPN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE,J.

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W.P.(C)No.27787 of 2004

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Dated: 1st February, 2007

JUDGMENT

The grievance of the petitioner is that the respondent-Corporation has rejected her application for building permit by Ext.P4 on the ground that proposal to widen the Paroppady-Kannadikkal road has not been cancelled in the D.T.P.Scheme.

2. A counter affidavit has been filed by the Corporation wherein it is conceded that pursuant to the proceedings under the Land Acquisition Act, lands were acquired for the proposed widening of the road and that the widening work is over. But what is contended is that in the master plan, the proposal has not been cancelled.

3. I am of the view that the learned counsel for the petitioner is right in his submission that it is only a technical contention which has been raised by the Corporation. The issue is certainly covered by the judgment of this court in **Padmini v. State of Kerala** (1999(3) K.L.T. 465). At present there are no current subsisting proceedings for acquisition of any portion of the petitioner's property. Therefore the original proposal to acquire the petitioner's property for widening of the Paroppady-Kannadikkal road cannot be a ground for rejecting the building permit application submission by the petitioner. Of course it is contended that Ext.P4 is an appealable order and it is open to the

petitioner to pursue his appellate remedies. However, since the issue is squarely covered by the judgment of this court in **Padmini's** case (supra), I am of the view that it will not be proper to relegate the petitioner to avail that remedy. Accordingly, Ext.P4 will stand quashed and the respondent-Corporation is directed to consider and pass orders on plan and application submitted by the petitioner for construction of the building, if the plan is otherwise in order, uninfluenced by the proposal to acquire the property for widening of the road and by anything that is contained in the master plan regarding the proposed widening of the Paroppady-Kannadikkal road. Orders as directed above will be passed by the respondent-Corporation within three weeks of receiving a copy of this judgment.

The Writ Petition will stand allowed to the above extent. No costs.

srd **PIUS C.KURIAKOSE, JUDGE**